



Federal Communications Commission
Washington, D.C. 20554

September 7, 2010

DA 10-1697

VIA EMAIL AND FACSIMILE

Mr. Mick Vollmer
ORION Steering Committee Chair
IT Administrator, Department of Communications and Technology
City of Virginia Beach
2405 Courthouse Drive
Virginia Beach, Virginia 23456-9115

Re: ORION Expansion Frequencies – Request for Interim Waiver Relief and Special Temporary Authorization

Dear Mr. Vollmer:

This letter grants in part your request,¹ dated July 29, 2010, as amended on August 30, 2010,² filed on behalf of the Overlay Regional Interoperability Network (ORION), for interim waiver relief and special temporary authorization (STA) to use 10 pre-consolidation 700 MHz State License channels³ at 14 sites⁴ across the Hampton Roads area of southeastern Virginia, from August 1, 2010, through February 28, 2011.

¹ See Letter from Mr. Mick Vollmer, IT Administrator, City of Virginia Beach, to Jeannie Benfaida, Policy Division, Public Safety and Homeland Security Bureau, PS Docket No. 06-229, dated July 29, 2010 (Waiver Request). On July 30, 2010, the Policy Division of the Public Safety and Homeland Security Bureau (Bureau) granted a verbal STA to Virginia Beach for a period of thirty days, beginning August 1, 2010, through August 31, 2010, to permit testing and operations using pre-consolidation narrowband State License frequencies at the ORION expansion sites; namely, York, Gloucester, Surry, and James City Counties. See July 30, 2010, email from Jeannie Benfaida, Policy Analyst, Policy Division, Public Safety and Homeland Security Bureau, to Todd Lane, Coordinator, ComIT Telecommunications, City of Virginia Beach.

² See Letter from Mr. Mick Vollmer, IT Administrator, City of Virginia Beach, to Jeannie Benfaida, Policy Division, Public Safety and Homeland Security Bureau, PS Docket No. 06-229, dated August 30, 2010 (Amended Request for Waiver) (requesting relief through June 30, 2011 and providing technical data on FCC Form 601 attachment). On August 30, 2010, the Bureau's Policy Division extended the verbal STA to September 7, 2010. See August 30, 2010, email from Jeannie Benfaida, Policy Analyst, Policy Division, Public Safety and Homeland Security Bureau, to Todd Lane, Coordinator, ComIT Telecommunications, City of Virginia Beach.

³ See 47 C.F.R. § 90.529. State License channels are narrowband channels, as designated in Section 90.531(b), and are licensed to each state. The channels subject to the initial Waiver Request are UASI-funded expansion frequencies 689-690/774.30625, 733-734/774.58125, 805-806/775.03125, 849-850/775.30625, and 885-886/775.53125 MHz. The channels subject to the Amended Waiver Request include existing ORION system frequencies 645-646/773.03125, 725-726/774.53125, 769-770/774.80625, 813-814/775.08125, 853-854/775.33125 MHz.

⁴ Amended Request for Waiver at 2 (site locations include the cities of Chesapeake, Hampton Roads, Newport News, Norfolk, Suffolk, Virginia Beach, and the counties of James City, Gloucester, and Surry).

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In your letter dated July 29, 2010, you requested interim waiver relief and STA until December 31, 2010, for continued use of five pre-existing, pre-consolidated frequencies at five sites, in order “to complete testing, close out the grant and remain operational until rebanding takes place.”⁵ You noted that the ORION system “consists of seven RF remote sites utilizing a 5-channel 700 MHz P25 digital simulcast system in the Hampton Roads area of southeastern Virginia.”⁶ You also noted that the City of Virginia Beach was awarded an Urban Area Security Initiative (UASI) grant in 2007, “to expand the ORION coverage to the northwest area of the Hampton Roads region” to include the counties of York, Gloucester, Surry and James City Counties,⁷ and that these sites “have been programmed to use the pre-consolidated frequencies and are currently undergoing testing.”⁸ You stated that “[d]ue to the grant closeout requirements and associated timelines (August 2, 2010) there is insufficient time to reband these sites to the post consolidated frequencies.”⁹

You also included with your request a July 27, 2010, letter from the Commonwealth of Virginia, Virginia Information Technologies Agency,¹⁰ supporting the “continued use of the COV [Commonwealth of Virginia] pre-consolidated 700 MHz State channels for the ORION project.”¹¹ The letter acknowledges that ORION “is in the process of transitioning to the consolidated channels, and it also notes that “the COV is not responsible to retune the infrastructure and associated subscribers currently operating on the ORION [system].”¹²

On August 30, 2010, you amended your July 27, 2010, request for interim waiver relief, stating that the initial request “does not provide enough time for [ORION] to perform first touch rebanding on the 10,000+ subscribers.”¹³ Accordingly, the amended request seeks waiver relief until June 30, 2011, to use the pre-consolidation frequencies “at all [fourteen] ORION/UASI sites.”¹⁴ You state that this date extension “will result in a more efficient and better coordinated rebanding effort”¹⁵

On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing wireless licenses in the 700 MHz band, in order to establish a nationwide, interoperable public

⁵ Waiver Request at 1.

⁶ *Id.*

⁷ *Id.* at 2.

⁸ *Id.*

⁹ *Id.*

¹⁰ Letter from David R. Warner, Spectrum Management, Public Safety Communications, Radio Engineering Division, Virginia Information Technologies Agency, Mick Vollmer, OSC Chairman/Information Technology Administrator, City of Virginia Beach, dated July 27, 2010 (VITA Letter).

¹¹ *Id.* at 1.

¹² *Id.* at 2.

¹³ Amended Waiver Request at 1-2. The Amended Waiver Request also includes FCC Form 601 reflecting the technical parameters and site locations of the entire ORION system.

¹⁴ *Id.* In addition to the UASI-funded frequencies, *see infra.* note 3, the channels subject to the Amended Waiver Request include existing ORION system frequencies 645-646/773.03125, 725-726/774.53125, 769-770/774.80625, 813-814/775.08125, 853-854/775.33125 MHz.

¹⁵ Amended Waiver Request at 2.

safety broadband communications network for the benefit of state and local public safety users.¹⁶ The Commission designated the lower half of the 700 MHz public safety band for broadband communications (763-768/793-798 MHz), and consolidated existing narrowband allocations in the upper half of the public safety 700 MHz band (769-775/799-805 MHz).¹⁷ In doing so, the Commission prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations outside of the consolidated channels as of August 30, 2007, and cautioned that any equipment deployed outside of the consolidated channels after August 30, 2007, would be ineligible for relocation funding.¹⁸ You therefore seek waiver relief until June 30, 2011, to reband the majority of [ORION] subscribers as well as the infrastructure at all 14 of the ORION radio site[s] with the appropriate post[-]consolidation frequencies.”¹⁹

Pursuant to Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, and on our own motion, we find that partial grant of the waiver request, as amended, is appropriate under the circumstances presented.²⁰ Specifically, we find that the public interest in providing ORION adequate time to complete the “first touch” on the majority of existing ORION subscribers prior to rebanding the infrastructure at all 14 of the ORION radio sites warrants limited waiver relief. We also find that partial grant of the request and STA will permit the ORION Steering Committee to provide sufficient notice to the agencies using ORION capable radios that their radios will need to be reprogrammed for the new channels, as well as to secure adequate funding for this transition. Notwithstanding our finding of extraordinary circumstances warranting continued operation of ORION on the pre-consolidation frequencies, grant of STA may not exceed 180 days as provided by Section 309(f) of the Communications Act, as amended.²¹ Accordingly, we limit the requested relief to 180 days from August 1, 2010, until February 28, 2011.

In reaching this decision, we recognize that consolidation of the 700 MHz band places three channel pairs of the five channel pairs (Channel 805-806/775.03125, Channel 849-850/775.30625 and Channel 885-886/775.53125) in the B block Guard Band, a commercial wireless allocation. However, given the limited duration of the requested relief and the secondary status of the STA, we find it appropriate to permit temporary operations in the B block Guard Band in this specific instance. Finally, as the request observes, we acknowledge that the financial costs and risks associated with rebanding the subject sites will be assumed by ORION.²²

Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309(f) and Section 1.3 of the Commission’s rules, 47 C.F.R. § 1.3, that the request for waiver and Special Temporary Authorization filed by the City of Virginia Beach, Department of Communications and Information Technology, on behalf of the Overlay Regional

¹⁶ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

¹⁷ *Id.* at ¶ 10.

¹⁸ *Id.* at ¶ 339.

¹⁹ Amended Waiver Request at 1.

²⁰ Section 1.3 provides that the Commission may, on its own motion, waive its rules if good cause is shown.

²¹ 47 U.S.C. § 309(f), as codified in 47 C.F.R. § 1.931(a).

²² *Id.*

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Interoperability Network, dated July 29, 2010, as modified by its amended request for waiver, dated August 30, 2010, IS GRANTED in part.

IT IS FURTHERED ORDERED that the Special Temporary Authorization granted pursuant to this letter order shall expire on February 28, 2011.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy Division
Public Safety and Homeland Security Bureau

cc: Mr. David R. Warner
Spectrum Management, Public Safety Communications
Radio Engineering Division
Virginia Information Technologies Agency
Meadowville Technology Park
11751 Meadowville Lane
Chester, Virginia 23836